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Before the

FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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SEP 27 2004

Federal Communications Commission  
Office of Secretary

In re )  
 )  
NPCR, INC. )  
 ) CC Docket 96-45  
Petition for Waiver of Certification )  
Filing Deadline Requirements of )  
Section 54.314 of the )  
Commission's Rules )

To: The Commission

**PETITION FOR WAIVER**

NPCR, Inc. ("Nextel Partners")<sup>1</sup> by undersigned counsel and pursuant to Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, hereby requests waiver of the certification filing deadline requirements of Section 54.314 of the Commission's rules, 47 C.F.R. § 54.314, which requires state certification of USF High Cost Program support for rural carriers. Nextel Partners seeks this waiver in connection with its designation as an Eligible Telecommunications Carrier ("ETC") by the States of Indiana, Hawaii and Louisiana. Specifically, Nextel Partners requests waiver of section 54.314:

- for the time period March 17, 2004 to June 30, 2004 for the rural study areas in which Nextel Partners was designated as an ETC by the State of Indiana on March 17, 2004;
- for the time period June 25, 2004 to September 30, 2004 for the rural study areas in which Nextel Partners was designated as an ETC by the State of Hawaii on June 25, 2004; and
- for the time period June 29, 2004 to September 30, 2004 for the rural study areas in which Nextel Partners was designated as an ETC by the State of Louisiana on June 29, 2004.

<sup>1</sup> NPCR, Inc. is a wholly-owned indirect subsidiary of Nextel Partners, Inc.

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Waiver of section 54.314 as set forth herein is needed for Nextel Partners to begin to receive USF high cost program support with regard to its designated areas in Indiana, Hawaii and Louisiana during the respective calendar quarter in which designation occurred (beginning with the date of designation) and during the immediately following calendar quarter.

## **I. BACKGROUND**

Nextel Partners provides fully integrated, wireless digital communications services using the Nextel® brand name in mid-sized and rural markets throughout the United States. Nextel Partners currently is designated as an ETC in fourteen states, including Hawaii, Louisiana and Indiana.<sup>2</sup>

Under Section 54.314 of the Commission's rules, in order for a carrier to receive USF high cost program support for rural areas within a state that has granted the carrier ETC designation, the respective state must file an annual certification with the Commission and with the Universal Service Administrative Company ("USAC") stating that all federal high-cost support will be used only for the provision, maintenance, and upgrading of facilities and service for which the support is intended.<sup>3</sup> A carrier will be eligible to receive high cost program support for all four quarters of a calendar year only if this annual certification is filed on or before October 1 of the *previous* calendar year.<sup>4</sup> Otherwise, when a certification is filed on or before January 1 of a calendar year, the carrier will be eligible to receive support for only the second, third and fourth quarters of

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<sup>2</sup> Nextel Partners also has been designated as an ETC in the States of Mississippi, Arkansas, Iowa, Wisconsin, New York, Pennsylvania, Florida, Virginia, Georgia, Alabama and Tennessee.

<sup>3</sup> See 47 C.F.R. § 54.314.

<sup>4</sup> See 47 C.F.R. § 54.314(d).

that calendar year; when the certification is filed on or before April 1, the carrier will be eligible to receive support only for the third and fourth quarters; and when it is filed on or before July 1, the carrier will be eligible for such support only for the fourth quarter of that year.<sup>5</sup>

On March 17, 2004, the Indiana Utility Regulatory Commission designated Nextel Partners as an ETC in various areas served by rural and non-rural carriers, and the state filed the requisite certification under section 54.314 on March 31, 2004.<sup>6</sup> Based on the date of state certification, Nextel Partners became eligible to receive high cost program support with respect to its rural designated areas in Indiana beginning July 1, 2004, the beginning of the third calendar quarter of 2004. Grant of the waiver requested herein is needed to allow Nextel Partners to receive high cost program support for its rural designated areas in Indiana during the period beginning with its date of designation as an ETC in Indiana, March 31, 2004, through June 30, 2004, the end of the second calendar quarter.

On June 25, 2004, the Hawaii Public Utilities Commission granted ETC designation to Nextel Partners in various areas served by rural and non-rural carriers in Hawaii, and filed the certification required by section 54.314 on the same date.<sup>7</sup> Based on the date of state certification, Nextel Partners will be eligible to receive high cost program support with respect to its rural designated areas in Hawaii beginning October 1, 2004, the beginning of the fourth calendar quarter of 2004. Grant of the waiver requested

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<sup>5</sup> Id.

<sup>6</sup> Copies of the Indiana Utility Regulatory Commission certification letter and order designating Nextel Partners as an ETC are reproduced at **Exhibit 1** hereto.

<sup>7</sup> Copies of the Hawaii Public Utilities Commission certification letter and order designating Nextel Partners as an ETC are reproduced at **Exhibit 2** hereto.

herein is needed to allow Nextel Partners to receive high cost program support for its rural designated areas in Hawaii during the period beginning with its date of designation as an ETC in Hawaii, June 25, 2004, through September 30, 2004, the end of the third calendar quarter.

On June 29, 2004, the Louisiana Public Service Commission granted ETC designation to Nextel Partners in various areas served by rural and non-rural carriers in Louisiana, and filed the certification required by section 54.314 on the same date.<sup>8</sup> Based on the date of state certification, Nextel Partners will be eligible to receive high cost program support with respect to its rural designated areas in Louisiana beginning October 1, 2004, the beginning of the fourth calendar quarter of 2004. Grant of the waiver requested herein is needed to allow Nextel Partners to receive high cost program support for its rural designated areas in Louisiana during the period beginning with its date of designation as an ETC in Louisiana, June 29, 2004, through September 30, 2004, the end of the third calendar quarter.

## II. DISCUSSION

Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, allows the FCC to waive the application of any rules for good cause shown. Federal courts hold that the Commission "may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest."<sup>9</sup>

In the instant case, strict application of the state certification filing deadline requirement set forth in section 54.314 would create the unintended consequence with

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<sup>8</sup> Copies of the Louisiana Public Service Commission certification letter and order designating Nextel Partners as an ETC are reproduced at Exhibit 3 hereto.

<sup>9</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990), *citing* *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

respect to Nextel Partners' service in Indiana, Hawaii and Louisiana of delaying USF high cost support for several months after the respective date on which each of these states acted to designate Nextel Partners as an ETC. None of these states has a mechanism for filing the required certification under section 54.314 with respect to a carrier prior to such carrier's designation as an ETC. Therefore it was simply not possible for the filing deadline under section 54.314 to have been met for the immediate months following Nextel Partners' ETC designation in each of these states. Unless the requested waiver is granted, USAC will not make timely and appropriate USF high cost program support payments to Nextel Partners for those months, despite Nextel Partners' functioning as an ETC and providing supported services in the designated areas in these states during the respective time periods.

A delay in Nextel Partners' receipt of high cost program support due to the strict application of section 54.314 would be inconsistent with the Commission's public policy goals of bringing access to mobile telecommunications technologies to all citizens. Indeed, the Commission has observed that facilitating access to spectrum-based, wireless and mobile communications technologies is "an especially important Commission goal ... not just in urban markets but also in rural areas, to enable Americans who travel, reside or conduct business throughout the country to communicate effectively for the benefit of the general public interest."<sup>10</sup> This paramount goal of fostering the access of

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<sup>10</sup> See *In the Matter of facilitating the Provision off Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services; 2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services; Increasing Flexibility to Promote Access to and the Efficient and Intensive Use of Spectrum and the Widespread Deployment of Wireless Services, and to Facilitate Capital Formation*, Notice of Proposed Rulemaking, 18 FCC Rcd 20802, 20807-08 (2003).

rural citizens to mobile services has shaped the Commission's public interest determinations underlying several recent orders granting ETC designation to wireless carriers, in which the Commission has found that mobility is in the public interest.<sup>11</sup>

Grant of Nextel Partners' petition for waiver would clearly serve the public interest and is fully consistent with Section 1.3 of the Commission's rules. Nextel Partners' service offerings further the goals of universal service by providing the USF supported services to citizens in Nextel Partners' designated areas over an integrated digital enhanced mobile nationwide network. USF high cost program support is vital to Nextel Partners' ability to carry out its mission as an ETC because it will allow Nextel Partners to pursue the construction and upgrading of its network to better serve customers in its designated areas. Nextel Partners should not be unfairly handicapped, stalled or otherwise delayed in pursuing its mission as an ETC by the strict application of rules that were never intended to undermine the fundamental purpose of ETC designation. Nextel Partners should not be denied months of high cost program support merely because the states of Indiana, Hawaii and Louisiana have no mechanism for filing certification

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<sup>11</sup> See e.g. *In the Matter of Federal-State Joint Board on Universal Service; Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, 19 FCC Rcd 1563, 1576 (2003); *In the Matter of Federal-State Joint Board on Universal Service; NPCR, Inc. d/b/a Nextel Partners; Petition for Designation as an Eligible Telecommunications Carrier in the state of Alabama; Petition for Designation as an Eligible Telecommunications Carrier in the state of Florida; Petition for Designation as an Eligible Telecommunications Carrier in the state of Georgia; Petition for Designation as an Eligible Telecommunications Carrier in the state of New York; Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania; Petition for Designation as an Eligible Telecommunications Carrier in the state of Tennessee; Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, DA 04-2667, ¶ 18 (August 25, 2004).

regarding a designated carrier's use of funds prior to such carrier's designation as an ETC.

The limited waiver that Nextel Partners seeks is fully consistent with and supported by well-established Commission precedent. Indeed, the Commission has granted numerous similar waiver requests.<sup>12</sup> In granting such waivers under circumstances similar to the instant case, the Commission has held that, "it would be onerous to deny an ETC receipt of universal service support for more than a quarter because the ETC designation occurred after the certification filing deadline."<sup>13</sup> In granting a waiver to the State of West Virginia for the late filing of its certification for non-rural ETCs, the Commission held that, "the potential harm that would be suffered by

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<sup>12</sup> See e.g. *In the Matter of Federal-State Joint Board on Universal Service; N.E. Colorado Cellular, Inc., Petition for Waiver of Section 54.314(d) of the Commission's Rules and Regulations*, 18 FCC Rcd 15597, 15599 (2003); *In the Matter of Federal-State Joint Board on Universal Service; Guam Cellular and Paging, Inc., Petition for Waiver of Section 54.314 of the Commission's Rules and Regulations*, 18 FCC Rcd 7138, 7141 (2003); *In the Matter of Federal-State Joint Board on Universal Service; RFB Cellular, Inc., Petition for Waiver of Section 54.314(d) and 54.307© of the Commission's Rules and Regulations*, 17 FCC Rcd 24387, ¶¶ 7-9 (2002).

<sup>13</sup> *In the Matter of Federal-State Joint Board on Universal Service; Centennial Cellular Tri-State Operating Partnership, Centennial Claiborne Cellular Corp., Petition for Waiver of Section 54.313(d) of the Commission's Rules and Regulations*, CC Docket 96-45, DA 04-2535, ¶ 8 (August 16, 2004); and see *In the Matter of Federal-State Joint Board on Universal Service; Grande Communications, Inc. Petition for Waiver of Sections 54.307 and 54.314 of the Commission's Rules and Regulations*, CC Docket 96-45, DA 04-2534, ¶ 9 (August 16, 2004). See also *Public Notice*, "The Telecommunications Access Policy Division of the Wireline Competition Bureau Grants Petitions Requesting Waiver of Various Filing Deadlines Related to the Universal Service Program," CC Docket No. 96-45, DA 04-2551 (August 19, 2004) (granting numerous similar waiver requests filed by: United States Cellular Corporation; RCC Minnesota; NPCR, Inc.; Michiana Metronet Inc., Centennial Michigan RSA 6 Cellular Corp., Centennial Michigan RSA 7 Cellular Corp.; RCC Atlantic, Inc.; Alaska DigiTel, LLC; and Centennial Lafayette Communications, LLC, Centennial Beauregard Cellular LLC, Centennial Caldwell Cellular Corp., Centennial Morehouse Cellular, LLC.)

customers [of the carriers] ... justifies a waiver.”<sup>14</sup> In granting this waiver to West Virginia, the Commission found that the loss of a quarter of USF funding would be “egregious.”<sup>15</sup>

Because grant of the requested waiver is fully consistent with the Commission’s rules and precedent and would allow Nextel Partners to better carry out its mission as an ETC in furtherance of the public interest, and because a delay in receipt of funds by Nextel Partners could have the egregious and unintended consequence of unnecessarily delaying implementation of the important goals of USF high cost support, the Commission should act promptly to grant Nextel Partners’ requested waiver. Indiana, Hawaii and Louisiana each filed the requisite certification letter either on the date of or within days of the respective grant of ETC designation to Nextel Partners.<sup>16</sup> The Commission should accept these certifications *nunc pro tunc* and should treat them as timely filed with respect to allowing Nextel Partners to begin receiving USF high cost program support for the designated areas in each of these states back to the respective date of designation.

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<sup>14</sup> *West Virginia Public Service Commission, Request for Waiver of State Certification Requirements for High-Cost Universal Service Support for Non-Rural Carriers*, 16 FCC Rcd 5784, 5786 (2001).

<sup>15</sup> *Id.*

<sup>16</sup> See **Exhibits 1, 2 and 3** hereto.



IV. CONCLUSION

For the reasons set forth above, Nextel Partners requests that the Commission grant this waiver petition on an expedited basis.

Respectfully submitted,

NPCR, INC.

By: 

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DATED: September 27, 2004

SECRET

# STATE OF INDIANA



INDIANA UTILITY REGULATORY COMMISSION  
302 W. WASHINGTON STREET, SUITE E-306  
INDIANAPOLIS, INDIANA 46204-2764

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March 31, 2004

Marlene H. Dortch  
Office of the Secretary  
FCC  
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Washington, DC 20554

Irene Flannery  
Vice President  
High Cost & Low Income Division  
Universal Service Admin Co.  
2120 L St, NW, Ste 600  
Washington, DC 20027

Re: CC Docket 96-45, USF Certification as Required by 47 C.F.R. § 54.314  
for NPCR, Inc. d/b/a Nextel Partners

Dear Ms. Dortch and Ms. Flannery:

On March 17, 2004, the Indiana Utility Regulatory Commission (IURC) issued an Order in Cause No. 41052-ETC 43 approving the request by NPCR, Inc. d/b/a Nextel Partners to be designated an Eligible Telecommunications Carrier. A copy of that Order is enclosed. Nextel Partners, a wireless carrier, was authorized to serve as an ETC in selected study areas of rural telephone companies. Those study areas are designated in Petitioner's Exhibit 7, a copy of which is included.

On March 25, 2004, Nextel Partners filed with the Commission a completed application seeking certification from the IURC that Nextel Partners is eligible to receive federal high-cost loop support. A copy of that completed application is enclosed.

On March 31, 2004, the IURC issued an Order in Cause No. 42067 HLS-43 declaring Nextel Partners eligible to receive federal high-cost loop support. A copy of that Order is enclosed.

Based on the IURC's March 31, 2004 Order, and on behalf of the IURC, I now certify to the FCC and USAC that NPCR, Inc. d/b/a Nextel Partners will be using federal support (which includes high cost loop support, local switching support, high cost support received pursuant to the purchase of exchanges, high cost model support, and hold harmless support) only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, consistent with Section 254 (e) of the Communications Act.

This certification applies only for support provided in calendar year 2004.

If you require further assistance, please call me at (317) 232-2716.

Sincerely,

A handwritten signature in cursive script that reads "Nancy E. Manley". The signature is fluid and elegant, with the first and last names being more prominent than the middle initial.

Nancy E. Manley  
Secretary to the Commission

## STATE OF INDIANA

## INDIANA UTILITY REGULATORY COMMISSION

ORIGINAL

IN THE MATTER OF THE DESIGNATION )  
 OF ELIGIBLE TELECOMMUNICATIONS )  
 CARRIERS BY THE INDIANA UTILITY )  
 REGULATORY COMMISSION PURSUANT )  
 TO THE TELECOMMUNICATIONS ACT OF )  
 1996 AND RELATED FCC ORDERS, AND IN )  
 PARTICULAR, THE APPLICATION OF )  
 NPCR, INC. d/b/a NEXTEL PARTNERS )  
 TO BE DESIGNATED )

CAUSE NO. 41052-ETC 43

APPROVED: MAR 17 2004

**BY THE COMMISSION:**

David E. Ziegner, Commissioner

Lorraine Hitz-Bradley, Administrative Law Judge

On April 21, 2003, NPCR, Inc. d/b/a Nextel Partners ("NPCR" or "Petitioner") filed its Verified Petition for Designation as an Eligible Telecommunications Carrier ("ETC"). By its petition, Petitioner requested the Indiana Utility Regulatory Commission ("Commission") to designate it as an ETC pursuant to 47 U.S.C. § 214(e), for the areas described in the petition.

Pursuant to notice duly given as provided for by law, a hearing was held at 9:30 a.m. on Thursday, October 2, 2003, in Room TC 10 of the Indiana Government Center South, Indianapolis, Indiana 46204. Prior to that hearing, Clay County Rural Telephone, Inc. ("CCRTC"), Indiana Exchange Carriers Association, Inc. ("INECA"), Smithville Telephone Company ("Smithville") and Verizon North, Inc. and Contel of the South, Inc. d/b/a Verizon North Systems ("Verizon") petitioned to intervene in these proceedings. The requested interventions were granted.

At the hearing Petitioner offered its Exhibit 1 (a copy of its Verified Petition), Exhibit 2 (Prefiled Direct Testimony of Don Wood), Exhibit 3 (Prefiled Direct Testimony of Scott Peabody), Exhibit 4 (Prefiled Rebuttal Testimony of Don Wood), Exhibit 5 (Prefiled Rebuttal Testimony of Scott Peabody) and Confidential Exhibit 6, as Petitioner's case-in-chief, which Exhibits were admitted into the record. The Petitioner's witnesses were cross-examined by all parties to these proceedings. CCRTC offered CCRTC's Exhibit 1 (Prefiled Direct Testimony of its witness Brad Welp) and Exhibit 2 (Petitioner's Response to CCRTC's data request), which were admitted into the record. CCRTC's witness was cross-examined by all parties. INECA offered INECA's Exhibit 1 (Prefiled Testimony of its witness Bruce Hazelett) which was admitted into the record. INECA's witness was cross-examined by all parties. The Indiana Office of Utility Consumer Counselor ("OUCC") offered OUCC's Exhibit 1 (the Prefiled Testimony of its witness Ronald Keen) which was admitted into the record. The OUCC witness was cross-examined by all parties. Smithville and Verizon did not submit any Exhibits or offer any testimony. The Presiding Officers also permitted the Petitioner to file a late filed Exhibit [Petitioner's Exhibit 7 (Late Filed)] revising the areas for which it is seeking eligible

telecommunication carrier status, which late filed Exhibit was further revised and admitted as Petitioner's Late Filed Exhibit 7 (Late Filed Revised). The Presiding Officers also admitted Petitioner's Exhibit 8 (Late Filed) and Exhibit 9 (Late Filed), which documents were requested by the Presiding Officers at the hearing.

The Commission, having examined all of the evidence of record and being duly advised in the premises, now finds as follows:

1. **Notice and Jurisdiction.** Proper, legal and timely notice of the hearing in this Cause was given and published by the Commission as provided for by law. The proofs of publication of the notice of the hearing have been incorporated into the record of this proceeding. Pursuant to the Telecommunications Act of 1996, 47 U.S.C. § 151, *et seq.* (the "Act"), and applicable Federal Communications Commission ("FCC") rules in 47 C.F.R. §§ 54.201 and 54.203, this Commission is authorized to designate ETCs, thereby enabling those so designated to apply for universal service support under 47 U.S.C. § 254. The Commission, therefore, has jurisdiction over the parties and subject matter of this Cause.

2. **Petitioner's Characteristics.** Petitioner is a "Telecommunications Carrier", as defined by 47 U.S.C. § 153(44). The specific areas for which Petitioner requests designation as an ETC were identified in Attachment 1 attached to Petitioner's Verified Petition (Exhibit 1). Attachment 1 was revised and the final designated areas for which Petitioner seeks ETC designation are as set forth in Petitioner's Exhibit 7 (Late Filed Revised). Petitioner's evidence indicates that Petitioner is a provider of wireless services, authorized by the FCC to serve in Indiana. Petitioner's service is commercial mobile radio service ("CMRS"), and thus regulated by the FCC. Petitioner provides Nextel services to small and rural markets within Indiana. Petitioner's business plan is to offer consumers in small and rural markets the same services, at the same rates, that are offered by Nextel Communications in urban markets. Petitioner was formed in 1998 and began providing service in Indiana in 2001. During that time, Nextel Partners placed 97 cell sites into service in Indiana, representing a network investment of \$25-30 million.

3. **Requirements for ETC Designation.** In Cause No. 40785, this Commission adopted the FCC's original eligibility requirements for designation of ETCs in the State of Indiana. Accordingly, each Indiana ETC receiving federal universal service support is required by FCC Rule 54.101(b) to offer the following nine universal services or functionalities, which are described more fully in Rule 54.101(a):

- a. Voice grade access to the public switched network;
- b. Local usage;
- c. Dual tone multi-frequency signaling or an equivalent;
- d. Single-party service or its functional equivalent;
- e. Access to emergency services;
- f. Access to operator services;
- g. Access to interexchange service;
- h. Access to directory assistance;
- i. Toll limitation for qualifying low-income customers.

In addition to offering the above nine universal services, ETCs are required by FCC Rules 54.405 and 54.411 to offer qualifying low-income customers both "Lifeline" and Link Up" programs as a condition precedent to receiving federal universal service support. FCC Rule 54.201(d)(2) also requires ETCs receiving federal universal service support to publicize the availability of the nine universal services and the Lifeline and Link Up programs and the charges therefore using media of general distribution. Pursuant to this Commission's November 5, 1997 Order in Cause No. 40785, carriers seeking ETC designation in Indiana must also file proposed Lifeline/Link Up tariffs and boundary maps depicting the areas for which ETC designation is sought.

Finally, because NPCR seeks to be designated as an additional ETC in rural service areas in Indiana, this Commission must also make a specific determination as to whether the public interest would be served by designating more than one ETC in the specified rural service areas. Specifically, the federal Telecommunications Act provides that:

[U]pon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of Paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

47 U.S.C. § 214(e)(2).

This Commission has not yet entered an order interpreting or applying the above "public interest" test to any request for designation as an additional, competitive ETC in rural service areas or in any prior generic proceedings. Accordingly, this case, and another pending case (IURC Cause No. 41052-ETC-45, filed by the Centennial companies) are cases of first impression in Indiana.

#### **4. Evidence Admitted**

##### **A. NPCR Testimony**

The Petition, which was admitted into the record as Petitioner's Exhibit 1 and incorporated herein by reference, states that NPCR provides all nine of the universal services or functionalities required by FCC Rule 54.101(b). The Petition also states that NPCR will provide Lifeline and Link Up discounts to qualifying low-income customers as required by FCC Rules 54.405 and 54.411 if it is designated as an ETC in this proceeding.

NPCR also presented evidence to support its compliance with each of the elements required under federal law for designation as an ETC. At the hearing, NPCR offered its Exhibit 1 (a copy of its Verified Petition), Exhibit 1A (a copy of its amended petition), Exhibit 2

(Prefiled Direct Testimony of Don Wood), Exhibit 3 (Prefiled Direct Testimony of Scott Peabody), Exhibit 4 (Prefiled Rebuttal Testimony of Don Wood), Exhibit 5 (Prefiled Rebuttal Testimony of Scott Peabody) and Confidential Exhibit 6 as Petitioner's case-in-chief, which exhibits were admitted into the record.

On August 1, 2003, NPCR prefiled testimony for its two witnesses, Scott Peabody and Don J. Wood. Mr. Peabody, Director in NPCR's Engineering Department, testified that NPCR was a "telecommunications carrier" as defined under the Act and is a provider of Commercial Mobile Radio Service ("CMRS") in various rural "Economic Areas" found in Indiana. NPCR is a separate corporation from Nextel Communications, although the latter is the largest shareholder of NPCR. Mr. Peabody made clear that the ETC designation NPCR seeks is solely for federal USF purposes. Although altered after the application was filed and after the close of the hearing in this proceeding, NPCR seeks designation in 10 RTC areas in the State of Indiana where NPCR's FCC license covers the entire service area of each such company.

Mr. Peabody testified as to the FCC requirements regarding ETC designation, noting that the FCC has made clear that both wireless and wireline entities meeting the threshold requirements for ETC designation are eligible to seek such status. Mr. Peabody outlined the services and functionalities required to be offered by ETCs under the applicable FCC rule, 47 C.F.R. §54.101(a). Mr. Peabody indicated that NPCR could provide each of the FCC-listed services and/or functionalities except for toll limitation service to qualifying low income consumers. According to Mr. Peabody, toll limitation was "linked" to Lifeline service for low income consumers. He indicated that voice grade access to the public switched telephone network was provided through interconnection agreements that NPCR had with local telephone companies, noting specifically Ameritech and GTE. Further, Mr. Peabody indicated that, while the FCC had not established a minimum amount of local usage required to be included in an ETC's universal service offering, he believed NPCR complied with the requirement because each of the offerings that NPCR makes available includes local usage. With respect to interexchange services, Mr. Peabody testified that each NPCR customer has the ability to make or receive toll calls through arrangements that NPCR has made with certain interexchange carriers ("IXCs") or through the ability of the customer to dial the access code of the IXC he/she wanted to use. Mr. Peabody also discussed the remaining elements in the FCC's list of universal service.

To support its application, and although some of the attachments/exhibits were subsequently modified, Mr. Peabody attached the then current service plans of NPCR, "detailed maps" of NPCR's coverage area overlaid on the affected RTCs' Study Areas, and a separate map with respect to the Verizon exchanges. Mr. Peabody testified that NPCR is not required to show that it can serve every customer in the requested ETC designated area. Rather, it must comply with a "reasonable request for service" throughout such area once ETC designation is granted.

With respect to advertising its universal service offering, Mr. Peabody indicated that NPCR will advertise the availability of its universal service offering and the corresponding charge in a manner that "fully informs the general public" located within the geographic area covered by its application. This advertising would continue to be in conjunction with Nextel Communications, and would advertise via general printed and electronic media, point of sale



locations and over the Internet. Mr. Peabody included a copy of NPCR's planned advertising as an exhibit to his testimony.

Because certain of the areas covered by the application were for areas served by RTCs, Mr. Peabody testified to the specific additional requirement that the Federal Act requires, *i.e.*, that the state commission must find that such additional ETC designation is in the "public interest." Mr. Peabody, relying on FCC directives, indicated that the Commission should presume in its analysis that "competition benefits consumers, and that citizens throughout the state are entitled to the benefits of competitive universal service." Moreover, he indicated that the Commission should look to "whether consumer benefits will be outweighed by demonstrated adverse impacts on consumers resulting from the designation." Thereafter, Mr. Peabody explained his views as to why NPCR met these standards, relying upon his observations that competitive service providers are "hard to find" in rural areas and that such areas lack choice of providers. Citing the need to provide a "level playing field" and that wireless providers are the "only real chance at bringing meaningful competition to these service areas," Mr. Peabody indicated that access to federal USF disbursements will allow NPCR to expand its network throughout the state and otherwise allow CMRS infrastructure to bring universal service and advanced services to rural consumers. Moreover, he suggested that, since NPCR provides mobile service, NPCR's service is more "universal" than the telephone companies.

In closing, Mr. Peabody testified to the level of service that NPCR provides vis-à-vis other wireless service providers. According to Mr. Peabody, if NPCR cannot meet "its customers' expectations for customer service, the customers vote with their feet" with respect to their mobile communications needs. Further, Mr. Peabody indicated that ETC designation will facilitate the continued role of NPCR in providing communications services to a variety of customers, including public schools, libraries, and local and state government agencies, specifically law enforcement. Thus, Mr. Peabody urged the Commission to designate NPCR as an ETC.

Mr. Wood testified on behalf of NPCR regarding the "public interest" aspect of the NPCR petition. Relying upon both his background as a consultant on economic and regulatory matters and his telephone company and IXC industry experience, Mr. Wood indicated he was familiar with the application of universal service mechanisms at both the state and federal levels. With respect to the public interest determination, Mr. Wood noted that he believed that RTCs involved in proceedings in other states had sought to "significantly broaden the scope of review and have attempted to put competition on trial." Such efforts were, in Mr. Wood's view, a distraction since the analysis should focus on the "facts of [NPCR's] Petition." Accordingly, Mr. Woods opined that designating NPCR as an additional ETC in the affected RTCs' service areas would have both short term and long term benefits.

With respect to the short term, Mr. Wood testified consumers would have a choice of technology and suppliers using different technology, along with a "broader array" of services and pricing. Long-term, according to Mr. Wood, consumers would benefit from the "competitive market forces" that he suggested create incentives for such carriers to be "more efficient and responsive to customer needs." Mr. Wood relied upon FCC pronouncements to support his

conclusions, stating that the FCC has rejected the suggestion that an additional ETC would "reduce investment incentives, increase prices, or reduce service quality of the [Incumbent Local Exchange Carrier ("ILEC")]." Similarly, Mr. Wood cited language regarding what the FCC opined to be benefits of competition.

Mr. Wood also testified that he saw two specific reasons for allowing competitive alternatives in rural areas. First, he believed that such alternatives were important for rural economic development, based on business relocation decisions regarding the availability of telecommunications services in an area. Second, he testified that the "availability of affordable and high-quality wireless service is extremely important in rural areas for health and safety reasons." Mr. Wood testified that NPCR offers services that benefit consumers, particularly options and choice based on calling patterns and calling frequency, along with the "greater access to the personal and public safety benefits of wireless services." Mr. Wood also cited to a court ruling that the consumers, not providers, are the focus of the benefits of universal service. As such, Mr. Wood testified that the designation of NPCR as an ETC is in the public interest.

#### **B. OUCC Testimony**

Ronald L. Keen, the OUCC's Director of its Telecommunications Division, presented the Public's evidence through his September 15, 2003 prefiled testimony, which was admitted into evidence.

Mr. Keen generally reviewed the legal basis for designating ETCs and provided background on ETC designations previously made by the Commission. Mr. Keen also identified issues that the OUCC believed should be resolved by the Commission before designating multiple ETCs in areas of Indiana served by RTCs. Mr. Keen recommended that the Commission defer a final ruling in this Cause until the Commission had completed a general investigation and issued an order providing guidance to common carriers that might decide to seek designation as additional landline or wireless ETCs in an RTC's service area.

Mr. Keen's overview of background information on ETC designations reflected that Indiana's ILECs were initially the only carriers to apply for ETC designation in Indiana. However, Mr. Keen noted that one competitive local exchange carrier ("CLEC"), Hancock Communications, Inc., applied for and received ETC status for areas outside its affiliated ILEC's service territory in Cause No. 41052-ETC-42. Mr. Keen further noted that, since Hancock's CLEC ETC case, only a few additional requests for ETC status have been filed with the Commission, including Petitioner's request that is currently under review in this Cause and the Centennial Communications case (41052-ETC-45). Both of these requests, according to Mr. Keen, involved applications by wireless carriers to be designated as additional ETCs in areas of Indiana already served by the rural Local Exchange Carriers ("RLECs.")

Mr. Keen identified several policy issues that the OUCC believed are relevant to the Commission's review of designating a second ETC in areas currently served by RTCs. Mr. Keen expressed the OUCC's concern that designating additional ETCs within the areas served by RTCs could result in the USF fund growing significantly, creating higher funding obligations, and/or higher end user USF surcharges or, in the absence of a surcharge, higher basic rates to

cover the cost of providing service. According to Mr. Keen, the primary interest of universal service is to ensure the "ubiquitous availability of quality telephone services in rural service areas" that are "comparable to services provided in urban areas at comparable and affordable rates." The low population densities in rural areas, in Mr. Keen's view, generally meant longer distances between service locations, increasing the cost of providing service in those areas. He indicated that federal USF disbursements were intended to keep end user rates affordable despite those higher costs. Thus, according to Mr. Keen, if existing rural ETCs lose large numbers of customers to new carriers designated as additional ETCs in the same rural service areas, it might result in higher end user rates or higher universal service funding requirements, a result that could harm, rather than further, universal service goals. Mr. Keen recognized the difficult public interest task assigned to this Commission - "on the one hand, promoting competition" that will offer "additional and improved service options to rural consumers," while on the other hand, keeping local telephone service rates in rural areas at levels that are "fair, reasonable, just, affordable, and comparable to rates charged in urban areas for the same or comparable telecommunication services."

Mr. Keen also identified specific concerns that the OUCC had with respect to NPCR's service offering. Mr. Keen explained that NPCR was not offering at least one flat rate local service offering with unlimited local calling, and was not offering equal access (i.e., toll presubscription) to toll providers. Mr. Keen testified that he was concerned about the comparability of NPCR's local usage plans with those of the ETCs currently serving in the areas where NPCR seeks designation. Mr. Keen also expressed concerns with respect to quality of service.

Mr. Keen indicated that, in designating an additional ETC, the Commission should consider what consumers view as a minimum service standard, augmented by technology-specific additions. The OUCC believed an ETC designation carries with it the obligation to meet or exceed service provision and service quality requirements and expectations. Based on the lack of facts in the record, Mr. Keen did not believe that NPCR had demonstrated that the public interest would be served by its designation as an additional ETC in the various RTCs' service areas.

Because the application also raised far-reaching issues, Mr. Keen suggested that the Commission conduct a general investigation regarding additional ETC designations in RTCs' service areas prior to granting any request for such designation. Specifically, Mr. Keen identified thirteen specific policy issues that he believed should be addressed as part of such proceeding by the Commission. These issues include:

1. What factors should be considered in determining whether the public interest would be served by granting ETC status to multiple carriers in any of Indiana's rural service areas;
2. Whether competitive service options would increase in any meaningful way as a result of granting ETC status to multiple telecommunications carriers in rural service areas;

3. Other states' actual experience after granting ETC status to multiple telecommunications service providers in rural service areas;
4. Initiatives taken in other states to promote or delay the granting of ETC status to multiple providers in rural service areas;
5. Whether any areas in Indiana that are currently served by rural ILECs/ETCs lack access to dependable basic, enhanced, or advanced broadband land-line telecommunication services;
6. Whether any areas in Indiana that are currently served by rural ILECs/ETCs lack access to dependable telecommunications service;
7. Whether Indiana's current ETC qualification requirements are adequate to safeguard the public interest, or whether Indiana should adopt generic guidelines for addressing public interest concerns when multiple Indiana common carriers seek ETC status in rural service areas;
8. The impact of designating multiple ETCs in rural service areas where customers have multiple telephone lines at a given service location;
9. The rates currently charged by Indiana ETCs for unlimited local service;
10. Whether carriers using wireless or other alternative technologies could provide local service with usage levels comparable to landline-based service at comparable and affordable rates;
11. The impact that the designation of multiple ETCs would have on federal universal service surcharges and basic local service rates;
12. The impact that the designation of multiple ETCs in rural service areas would have on state universal service funding levels, assuming a state USF is ultimately created; and
13. Whether the public interest requires more stringent ETC eligibility requirements for rural service areas (e.g., rate review, tariff filing, recordkeeping, reporting, and service quality requirements for wireless carriers).

Mr. Keen indicated that the OUCC envisioned these issues being reviewed and discussed through technical workshops, a process which had been effective in a number of other general Commission investigations and could, in the OUCC's view, be a valuable starting point here as well. If total agreement were not achieved through such technical workshops or settlement negotiations, each party would then have an opportunity to present its positions in prefiled direct and rebuttal testimony, with the opportunity to present evidence and conduct cross-examination

of other parties' witnesses at a public Evidentiary Hearing.

### C. INECA Testimony

The testimony admitted on behalf of INECA was by Bruce Hazelett, president of INECA. Mr. Hazelett suggested that the Commission should undertake its own rigorous review as to whether NPCR had demonstrated that it could comply with the service offerings required of all existing ETCs and comply with Commission oversight and reporting requirements applicable to all the INECA member companies. Mr. Hazelett noted statements of two FCC commissioners to support INECA's view. According to Mr. Hazelett, if the Commission is inclined to take action now, the Commission should make clear that any public interest finding be conditional. In Mr. Hazelett's view, this latter request was reasonable because of the overarching public policy issues being addressed at the federal level regarding federal USF disbursements to second ETCs and because of the potential ramifications of such actions on Indiana-specific commitments to universal service.

Mr. Hazelett explained that a telecommunications carrier must be designated as an ETC by the Commission in order for that entity to be eligible to receive federal USF disbursements, pursuant to §214 of the Federal Act. Mr. Hazelett pointed out that the plain and unambiguous language of Section 214(e)(2) states that the Commission is not required to designate an additional ETC within the service area of an RTC (such as each of the INECA member companies). Moreover, Mr. Hazelett expressed his view that if the Commission were inclined to grant ETC status to an additional entity for an RTC's service area, the Commission was still required to find affirmatively that such designation is "in the public interest." He attached the applicable sections of Section 214 to his testimony for reference to support his assertion that the Federal Act uses the term "shall" with respect to need for any public interest finding.

Mr. Hazelett explained that the service area required for designation purposes is the RTC's "Study Area," since no affirmative action had been taken to establish a different geographic area by the FCC in conjunction with its Joint Board addressing universal service. The term "Study Area," according to Mr. Hazelett, is the entire geographic territory of the specific INECA member company within which it operates and is that which is used for purposes of establishing its federal USF disbursements.

Mr. Hazelett noted that, in addition to the requirement for an affirmative public interest determination, an ETC is also required to demonstrate to the Commission the following:

1. First, the applicant's service must meet nine specific service criteria set forth by the FCC. The service must provide the following: 1) voice grade access to the public switched telephone network; 2) local usage free of charge; 3) dual tone multi-frequency signaling or its equivalent; 4) single party service or its equivalent; 5) access to emergency services, such as 911; 6) access to operator services; 7) access to interexchange service; 8) access to directory assistance; and 9) toll limitation for qualifying low-income customers – toll limitation or toll restriction and both Lifeline and Link-Up.

2. Second, the applicant must advertise the availability of its service throughout the entire study area of the INECA member company.
3. Third, the applicant must be designated to serve and must offer service throughout the entire Study Area of the RTC.

Mr. Hazelett explained that these were minimum requirements, since state commissions had discretion to adopt additional requirements as a condition of designating a particular applicant as an ETC. He noted that the Federal Act uses the terms "public interest" and the "public interest, convenience and necessity," which were the very same standards that the Commission had traditionally used to ensure that the interests of all consumers within the State of Indiana are advanced. With respect to the necessary public interest finding, Mr. Hazelett recommended that the Commission should consider the impact that the designation will have on the consuming public, on the federal USF, and achievement of the universal service objectives. He expressed INECA's view that no customer of an additional ETC should be subject to a lesser degree of service than that he or she would receive with respect to that provided by an existing ETC (e.g., an INECA member company), and no ETC should receive federal USF unless it abides by the same standards of service quality and consumer protections as the INECA member follows. Mr. Hazelett noted that the Commission should determine whether the applicant provides the nine services, as well as the ability to offer service throughout the entire service area.

Mr. Hazelett did not consider these conditions to be a barrier to entry, as he felt that the Commission clearly takes its commitment to preserving and advancing universal service very seriously and has ensured that its policies are tailored to the concerns that may bear directly on resulting consumer rates. As such, the Commission's oversight of these matters and of the carriers operating within Indiana is necessary, particularly when an entity seeks the responsibility as a "universal service provider" within the rural areas of Indiana. Thus, according to Mr. Hazelett, any election to seek ETC status carries with it the responsibility to comply with all applicable and relevant regulations affecting quality of service and service provisioning within Indiana.

Mr. Hazelett recommended that the Commission should assert its proper regulatory oversight of an ETC, regardless of its status as an ILEC or a wireless service provider, and the assertion of this jurisdiction is not a barrier to entry. Rather, according to Mr. Hazelett, the Commission exercising this jurisdiction would not only be a matter of fundamental fairness between carriers, but was also required to ensure consumers are not without recourse to complain and/or challenge the very basis of service an ETC is properly required to offer. Mr. Hazelett further noted that NPCR had already entered the market and it now seeks the benefits that are derived from being a universal service provider (one of which is the federal USF disbursements.) Such benefit, according to Mr. Hazelett, carries with it responsibilities, especially if an entity elects to seek those benefits. Thus, he concluded that common sense indicates that the approach he suggested for reviewing NPCR's request is no barrier to entry.

Mr. Hazelett also noted that the fact that NPCR utilizes wireless networks for calls is not

relevant to the factual findings and public interest determination that the Commission must make, and it violates the principle of technological neutrality, an additional principle of universal service adopted by the FCC. In Mr. Hazelett's view, technological neutrality demands that all ETCs be held to the same standard regardless of the technology they use.

Mr. Hazelett attached to his testimony all of the responses from NPCR to INECA's interrogatories. He expressed his concern that such responses provided scant information regarding the ETC qualifying criteria that NPCR is obligated to demonstrate, and that, based on those answers, it appeared that the NPCR believed that the Commission should simply "rubber stamp" its application. Such result, according to Mr. Hazelett, was not a position that INECA believed properly reflected the public interest determination required by the Commission.

He noted NPCR's response that it did not have a service offering comparable to the unlimited local calling plan offered by the INECA member companies and that all calls go against all of the plans' "bucket of minutes." Mr. Hazelett noted that "local measured service" ("LMS") was the exception to the rule in Indiana since the INECA member companies offer their universal service package based on unlimited calling and with toll presubscription (which NPCR does not offer). Since NPCR admitted, in Mr. Hazelett's view, that it was providing local exchange service, a substantial question of policy was raised, as this may very well be the first time that the Commission is effectively being asked to agree to the use of LMS by an ETC. Since service parity for consumers was, in Mr. Hazelett's view, a relevant policy consideration for the Commission, this issue could be addressed by requiring the offering and marketing by NPCR of at least one calling plan with unlimited local calling and toll presubscription (*i.e.*, equal access) for a flat monthly fee within a local calling area no smaller than that provided by the RTC. He further suggested that such a condition was permissible, since the FCC required only some amount of local usage to be included in the monthly charge, but had not established the amount of local usage that was required. With respect to toll presubscription, he was not aware of any decisions that would preclude such requirement as a condition for additional ETC status.

The second example Mr. Hazelett provided was based on his position that the ability to offer service also required the ability to terminate its end users' calls, and that capability required that necessary terms and conditions be in place between carriers. Mr. Hazelett supported this position by relying upon the policy established in I.C. 8-1-2-5. Mr. Hazelett indicated that NPCR had stated it had "interconnection arrangements" with only Ameritech and GTE, but NPCR has not stated that it had any arrangements with the INECA companies. Mr. Hazelett also noted that there had been no demonstration that NPCR planned to serve the entire service area of each of the affected INECA member companies.

Third, Mr. Hazelett noted that NPCR indicated that the call drops off once a NPCR customer making a call exits the NPCR network. This result, in Mr. Hazelett's view, raised the factual issue as to whether a NPCR customer actually had a dedicated path for its communications as required by the FCC's rules. Fourth, and in response to INECA's Interrogatory No. 6, NPCR indicated that it used switches in Kentucky (somewhere in Louisville) and in Iowa (somewhere in Des Moines) to provide necessary switching. According to Mr. Hazelett, even if NPCR were to be able to demonstrate its qualifications for ETC status, a

substantial question of fact still existed with respect to how the Commission could assure itself that federal USF disbursements ear-marked for Indiana are spent in Indiana, or how NPCR could certify the same, when at least part of the NPCR network is in different states. Finally, Mr. Hazelett questioned how NPCR could provide operator services since, in response to INECA's Interrogatory Nos. 6 and 8, NPCR stated that access to operator services for some customers was not available until NPRC activated the necessary trunks, but there was no indication by NPCR when these facilities would be placed in service.

In addition to these factual questions, Mr. Hazelett also opined that a substantial question existed as to whether NPCR could sustain its burden to demonstrate that the public interest would be served by granting it additional ETC status. Mr. Hazelett raised this question because, in his view, the only rationale provided by NPCR is that "competition" would be advanced. However, Mr. Hazelett noted that NPCR's purported public interest showing rested on the proposition that designating additional ETCs in an RTC's study area somehow created new competition and that competition presumably leads to beneficial competitive marketplace effects. According to Mr. Hazelett, these arguments substantially negated any meaningful application of the public interest test contained in Section 214(e)(2) of the Act. If merely increasing competition were enough to satisfy the public interest test, Congress' limitation on the designation of additional ETCs in RTCs' study areas was, in his view, an "empty" directive. Mr. Hazelett indicated that, if NPCR was correct, Congress would have applied the same ETC designation standard to both rural and non-rural areas under Section 214(e)(2), which it did not. Therefore, the automatic conclusion that competition, in and of itself, satisfied Section 214(e)(2)'s "public interest" requirements would essentially write the public interest provision for RTC areas out of the Act. Thus, in Mr. Hazelett's view, it only seemed reasonable that in adopting the public interest test and delegating to states the discretion to determine whether and how many ETCs to designate in RTCs' study areas, Congress recognized that it does not always make sense to designate additional ETCs in such areas. In addition, Mr. Hazelett noted that the "competition" theory offered by NPCR is factually suspect, as it had nothing to do with the services that the INECA member companies offer, and that service was already being offered by NPCR.

Mr. Hazelett also disagreed with the suggestion by Mr. Wood that INECA was attempting to make this case "about competition," as this suffered from the same misassumption included in Mr. Peabody's testimony, that the competition between mobile providers and/or competition for toll traffic (i.e., "expanded local calling") is sufficient to sustain NPCR's burden regarding its Section 214(e)(2) public interest demonstration.

Mr. Hazelett believed that NPCR had failed to meet its burden of demonstrating that it offered the services required of ETCs. Moreover, Mr. Hazelett suggested that the scant factual information provided by NPCR, coupled with the apparent disregard for the proper oversight by the Commission of any universal service provider within the State of Indiana, raises substantial and serious questions regarding the ability of the Commission to make any public interest finding. While he recognized that the Commission could, in its discretion, conduct its own rigorous review in order to develop a factual record upon which such findings can be made, Mr. Hazelett stated that in INECA's view such factual record did not currently exist. He also



indicated that INECA would support the type of general investigation that the OUCC had suggested in the Cause addressing the application of the Centennial Companies for additional ETC status.

Although Mr. Hazelett recognized that under current FCC rules, the INECA member companies would not be financially affected by the Commission granting NPCR's request, he indicated that INECA believed that the Commission was still required to provide a proper foundation for its determinations regarding second ETCs within an RTC's service area, and require a demonstration by the applicant of compliance with the same principles, obligations, and service offerings that the INECA member companies were required to make. This parallelism, according to Mr. Hazelett, ensures not only that all universal service providers in rural areas of Indiana are held accountable for the offerings they make, but it would also ensure fundamental fairness and acceptance of the responsibilities that go hand-in-hand with the title of ETC within rural areas of Indiana. This result, according to Mr. Hazelett, was important because there is an on-going public policy debate at the federal level regarding the federal universal service mechanism and USF disbursements being made to second ETCs. According to Mr. Hazelett, the overarching issue is whether the concept of second ETCs within a rural, higher cost to serve area (such as those served by RTCs) makes rational sense. The debate (according to Mr. Hazelett) continues with asking whether it was fundamentally fair to allow second ETCs to receive disbursements without a cost-based showing (such as the incumbent RTC telephone companies provide) and the resulting adverse impact that such policy had on the overall size of the federal USF. Mr. Hazelett noted that the size of the federal USF raised thorny issues associated with the amount of funding that must be generated to ensure that proper levels of USF funding are available for disbursement, and the push back created by carriers required to fund that amount. According to Mr. Hazelett, among the changes in the federal USF that are being discussed are rule modifications that would require state responsibility for USF funding to additional ETCs in areas served by RTCs. These issues, in Mr. Hazelett's view, only highlighted the on-going federal debate, and demonstrated why any decision made in this proceeding must reflect the unsettled nature of the current federal USF debate.

Mr. Hazelett requested that any public interest determination that would provide the basis for granting NPCR's request be made conditionally, so that the Commission could revisit it. Mr. Hazelett indicated that such approach was consistent with the Commission's desire to ensure that its policies are sufficiently flexible to accommodate future regulatory changes, as well as the discretion provided to it under the Federal Act in the event that applicable rules governing designation and funding of ETCs are modified.

#### **D. CCRTC Testimony**

CCRTC offered the pre-filed testimony of Bradley W. Welp, the company's General Manager. Mr. Welp testified regarding the size of CCRTC in terms of access lines compared to larger carriers in the State. Additionally, Mr. Welp testified that CCRTC currently received \$83.5029 per access line in Federal USF Support. Mr. Welp also testified about CCRTC's plant and the rates it charges its customers which are, depending on the exchange, \$16.50 per month or \$10.75 per month, before various additives. Mr. Welp also testified that CCRTC's customers have access to advanced telecommunications services and that the company provides voice